

# **EXHIBIT D**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 SECURITIES and EXCHANGE  
4 COMMISSION,

Plaintiff,

v.

20 Civ. 10832 (AT) (SN)  
Remote Proceeding

7 RIPPLE LABS, INC., et al.,

8 Defendants.

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New York, N.Y.  
July 15, 2021  
3:00 p.m.

11 Before:

12 HON. SARAH NETBURN,

13 U.S. Magistrate Judge  
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1 because he knows firsthand about the communication that he had  
2 with industry participants about whether digital assets were  
3 securities, and he also knows firsthand about communications in  
4 which we believe those industry participants expressed  
5 confusion as of 2018 about how the federal securities laws  
6 would or should apply to digital assets. And he has that  
7 personal knowledge because he spoke with people outside the  
8 agency both before and after he gave the speech -- to which  
9 your Honor referred, frequently referred to as the Hinman  
10 speech -- in June 2018 about how the federal securities laws  
11 apply to digital assets. And we think that the circumstances,  
12 the significance, and the impact of that speech are all  
13 directly relevant to the SEC's claims and to our defenses. We  
14 need to depose Mr. Hinman to develop the facts about  
15 perceptions in the marketplace that he was trying to respond to  
16 with his attempt to revise guidance in that speech. Whether he  
17 was successful in clarifying matters or not, that was clearly  
18 his intent.

19 In general --

20 THE COURT: Why do you say that was clearly his  
21 intent?

22 MR. RAPAWY: I think because that is a reasonable  
23 inference from the speech itself and also from the fact that  
24 the SEC later held it out to Congress -- the chairman said to  
25 Congress and said that the Agency has been transparent on its

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1 application of the *Howey* criteria, the digital assets -- I am  
2 paraphrasing but the exact quote is in our letter. And I also  
3 think that when the Agency's Office of Investor Education  
4 points investors to the speech that is also a showing of the  
5 intent that the speech was to provide guidance, not to present  
6 his personal views in some kind of abstract academic context,  
7 not to just have fun talking about an interesting issue. It is  
8 an interesting issue but that's not why he was giving a speech.  
9 He was giving a speech because the industry was asking for  
10 guidance and he was providing it with, admittedly, a disclaimer  
11 that the SEC wasn't going to be bound by that guidance. But  
12 the existence of that --

13 THE COURT: If your view is that the speech reflects  
14 Agency guidance -- I think is what you just said -- then why  
15 wouldn't the discussions that led up to that speech be covered  
16 under the deliberative process privilege?

17 MR. RAPAWY: Well, I have two answers to that, your  
18 Honor. The first thing is we want to take this in steps in  
19 part to determine whether this speech was adopted or approved  
20 by the SEC. Now, they have denied that. It is a contested  
21 issue, a contested factual issue in this case whether this  
22 speech was ever adopted or approved by the SEC and we would  
23 like to establish that one way or the other. If it was, then  
24 that really heightens the impact of that speech for Ripple's  
25 fair notice event and for the individual's state of mind -- not